

All communications respecting this  
case should identify it by number  
and names of parties.



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: BOX INTERFERENCE  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Telephone: (703) 308-9797  
Facsimile: (703) 308-7953

**MAILED**

**NOV 07 1996**

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Applicants: Fischhoff et al  
Serial No.: 08/434,105  
Filed: 05/03/95  
For: Synthetic Plant Genes and  
Method for Preparation  
Accorded benefit: U.S. Serial  
Nos. 07/959,506, filed  
10/09/92, now U.S. Patent No.  
5,500,365, issued 03/19/96,  
07/476,661, filed 02/12/90,  
now abandoned and 07/315,355,  
filed 02/24/89, now abandoned

The case referred to above has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with other cases hereafter specified. Attention is directed to the fact that this interference is declared pursuant to 37 C.F.R. § 1.601 et seq., effective April 21, 1995 (60 F.R. 14488, 1173 O.G. 384). The interference is designated as No. 103,781.

By direction of the Commissioner of Patents and Trademarks and as required by 35 U.S.C. § 135(c), notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference."

The cases involved in this interference are:

Junior Party

Applicants: Kenneth A. Barton and Michael J. Miller

Addresses: 4919 Hickory Trail, Middleton, WI 53562  
1401 Main Street, Cross Plains, WI 53528

Serial No.: 07/827,906, filed 01/30/92

For: Improved Expression of Genes in Plants

Assignee: None

Attorneys of Record: Nicholas J. Seay, Thad F. Kryshak,  
Carl Schwartz, and Albert Halluin

Associate Attorney: None

Accorded Benefit of: U.S. Serial No. 07/390,561, filed 08/07/89

Address: Quarles & Brady  
P.O. Box 2113  
Madison, WI 53701-2113

Junior Party

Applicants: David A. Fischhoff and Frederick J. Perlak

Addresses: 28 North Maple Ave., Webster Groves, MO 63119  
11035 Crimson Drive, St. Louis, MO 63146

Serial No.: 08/434,105, filed 05/03/95

For: Synthetic Plant Genes and Method for Preparation

Assignee: None

Attorneys of Record: Dennis R. Hoerner, Jr., Howard C. Stanley  
and Arnold H. Cole

Associate Attorney: Lawrence M. Lavin, Jr.

Accorded Benefit of: U.S. Serial Nos. 07/959,506, filed 10/09/92,  
now U.S. Patent No. 5,500,365, issued  
03/19/96, 07/476,661, filed 02/12/90, now  
abandoned and 07/315,355, filed 02/24/89,  
now abandoned

Address: Lawrence M. Lavin, Jr.  
Monsanto Company - BB4F  
700 Chesterfield Parkway North  
St. Louis, MO 63198

Senior Party

Patentees: Michael J. Adang, Thomas A. Rocheleau, Donald  
J. Merlo and Elizabeth E. Murray

Addresses: 160 Tamarack, Athens, GA 30605  
3100 Buena Vista, Madison, WI 53704  
4612 Springbrook Court, Midland, MI 48640  
2426 Commonwealth Ave., Madison, WI 53711

Serial No.: 08/057,191, filed 05/03/93, Now U.S. Patent  
No. 5,380,831, issued 01/10/95

For: Synthetic Insecticidal Crystal Protein Gene

Assignee: Mycogen Plant Science, Inc., San Diego,  
Calif.

Attorneys of Record: Roman Saliwanchik, David R. Saliwanchik,  
Jeff Lloyd, and Ted W. Whitlock

Associate Attorney: None

Accorded benefit: U.S. Serial Nos. 07/827,844, filed 01/28/92,  
now abandoned, 07/242,482, filed 09/09/88, now  
abandoned

Address: Jeff Lloyd  
2421 N.W. 41st Street  
Ste. A-1  
Gainesville, FL 32606-6669

Count 1


A method of designing a synthetic *Bacillus thuringiensis* gene to be more highly expressed in plants, comprising the steps of:

a) analyzing the coding sequence of a gene derived from a *Bacillus thuringiensis* which encodes an insecticidal protein toxin, and modifying a portion of said coding sequence to yield a modified sequence which contains a greater number of codons preferred by the intended plant host than did said coding sequence, or

b) analyzing the coding sequence of a gene derived from a *Bacillus thuringiensis* which encodes an insecticidal protein toxin, and modifying a portion of said coding sequence to yield a modified sequence which contains a greater number of codons preferred by the intended plant host than did said coding sequence and fewer plant polyadenylation signals than said coding sequence.

The claims of the parties which correspond to this count are:

Barton et al: Claims 1-4, 7, and 15-22  
Fischhoff et al: Claims 3, 5, and 39-43  
Adang et al: Claims 1-14

  
RONALD H. SMITH  
Administrative Patent Judge  
(703) 308-9797

RHS/dal

**INTERFERENCE  
DIGEST**

Interference No. 03,781 Paper No. 7  
Name, Fischhoff et al.  
Serial No. 08/434,105 Patent No. \_\_\_\_\_  
Title, SYNTHETIC PLANT GENES AND METHOD FOR PREPARATION  
Filed, 05/03/95  
Interference with Barton, et al. v. Adang et al.

**DECISION ON MOTIONS**

Examiner-in-Chief, \_\_\_\_\_ Dated, \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FINAL DECISION**

Board of Patent Appeals and Interferences, Favorable Dated, 1/29/94  
\_\_\_\_\_  
Court, \_\_\_\_\_ Dated, \_\_\_\_\_

**REMARKS**

Adverse Judgment to Barton et al.  
Redeclaration Sept. 4, 2002  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

355

BEST AVAILABLE COPY